

In re application of: Gusler et al.	§	Group Art Unit: 2457
	§	
Serial No.: 09/935,396	§	Examiner: Lashonda T. Jacobs
	§	
Filed: October 18, 2001	§	Attorney Docket No: AUS920010540US1
	§	
For: METHOD AND SYSTEM FOR		
AUTOMATED PROJECT		
ACCOUNTABILITY		

**Commissioner for Patents**

**P.O. Box 1450**

**Alexandria, VA 22313-1450**

**APPEAL BRIEF (37 C.F.R. 41.37)**

This brief is in furtherance of the Notice of Appeal, filed in this case on April 06, 2009.

A fee of \$540.00 is required for filing an Appeal Brief. Please charge this fee to IBM Corporation Deposit Account No. 09-0457. No additional fees are believed to be necessary. If, however, any additional fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0457. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0457.

**REAL PARTY IN INTEREST**

The real party in interest in this appeal is assignee International Business Machines Corporation, a corporation organized and existing under the laws of the State of New York, USA and located at 1 New Orchard Road, Armonk, New York 10504, USA.

### **RELATED APPEALS AND INTERFERENCES**

The application had formerly been the subject of Appeals, wherein the first notice of appeal was filed April 10, 2006 with the second notice of appeal filed on April 12, 2007. With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no such other appeals or interferences.

## **STATUS OF CLAIMS**

### **A. TOTAL NUMBER OF CLAIMS IN APPLICATION**

Claims in the application are: 1-22.

### **B. STATUS OF ALL THE CLAIMS IN APPLICATION**

1. Claims cancelled: NONE.
2. Claims withdrawn from consideration but not cancelled: NONE
3. Claims pending: 1-22.
4. Claims allowed: NONE
5. Claims rejected: 1-22
6. Claims objected to: NONE

### **C. CLAIMS ON APPEAL**

The claims on appeal are: 1-22.

### **STATUS OF AMENDMENTS**

No amendments after the Final Office Action were made. Therefore, claims 1-22 on appeal herein are as amended in the Response to Office Action dated January 27, 2009.

## **SUMMARY OF CLAIMED SUBJECT MATTER**

In this summary, all references to the specification provide non-limiting examples of embodiments of the claims. The subject matter of the claims is directed towards electronic forum assisted automation of project accountability.

### **A. INDEPENDENT CLAIM 1**

The subject matter of claim 1 is directed to a method for automated project accountability (see Specification page 2, lines 15-16, which states in part, “a method for automated project accountability”). The method determines (Figure 2, block 220) at least one decision maker of a project preparation (Specification page 6, lines 9-11). The method, by way of an electronic forum (Specification page 6, lines 23-30) determines (Figure 2, block 230) a readiness category for the decision maker (Specification page 2, line 17). The method provides (Figure 2, block 230) a readiness category rating for the readiness category (Specification page 7, lines 1-4). The method determines a decision process for the readiness category and readiness category rating (Specification page 7, lines 11-18). The method conducts (Figure 2, block 260) a project assessment as a function of the decision process (Specification page 8, lines 20-27). The method determines (Figure 2, block 270) a project readiness as a function of the project assessments (Specification page 2, lines 21-22).

### **B. INDEPENDENT CLAIM 9**

The subject matter of claim 9 is directed to a system for automated project accountability (Specification page 3, lines 1-2, which states in part “a system for automated project accountability”). The system includes means for determining (Figure 2, block 220) at least one decision maker of a project preparation (Specification page 6, lines 9-11). The system includes means for determining (Specification page 6, lines 23-30, Figure 2, block 230) a readiness category for the decision maker (Specification page 2, line 17). The system includes means for providing (Figure 2, block 230) a readiness category rating for the readiness category (Specification page 7, lines 1-4). The system includes means for determining a decision process

for the readiness category and readiness category rating (Specification page 7, lines 11-18). The system includes means for conducting (Figure 2, block 260) a project assessment as a function of the decision process (Specification page 8, lines 20-27). The system includes means for determining (Figure 2, block 270) a project readiness as a function of the project assessments (Specification page 2, lines 21-22).

**C. DEPENDENT CLAIM 10**

The subject matter of claim 10 is directed to the claim 9 system for automated project accountability. The system for automated project accountability further includes means for assigning vote weighting (Figure 2, block 240) to the decision maker (Specification page 7, lines 11-25).

**D. DEPENDENT CLAIM 11**

The subject matter of claim 11 is directed to the claim 9 system for automated project accountability. The system for automated project accountability further includes means for changing (Specification page 8, lines 25-27) a project management application graphical interface (Specification page 8, lines 13-16), as a function of the project assessment.

**E. DEPENDENT CLAIM 12**

The subject matter of claim 12 is directed to the claim 9 system for automated project accountability. The system for automated project accountability further includes means for assigning a time limit in association (Specification page 9, lines 12-15,) with the project assessment and the project readiness (Specification page 9, line 30 - page 10, line 4).

**F. DEPENDENT CLAIM 13**

The subject matter of claim 13 is directed to the claim 9 system for automated project accountability. The system for automated project accountability further includes means for providing a collaborative environment (Specification page 5, lines 14-25) for the decision maker (Figure 2, block 220).

#### **G. DEPENDENT CLAIM 14**

The subject matter of claim 14 is directed to the claim 9 system for automated project accountability. The system for automated project accountability further includes means for providing project information (Specification page 9, lines 16-24) from a project creator (Specification page 5, line 23, through page 6, line 20; page 13, lines 10-11). The system includes means for accessing a data repository (Specification page 13, line 2; Figure 3, block 345). The system includes means for retrieving a list from the data repository (Specification page 13, lines 1-13). The system includes means for selecting a project decision maker (Specification page 6, line 12; page 7, lines 28-29; and page 13, line 4) as a function of the project information and list (Specification page 13, lines 1-9; Figure 3, block 340). The system includes means for selecting at least one contributing decision maker (Specification page 6, lines 16-17) as a function of the project information, list, and project decision maker (Specification page 13, lines 9-13).

#### **H. DEPENDENT CLAIM 15**

The subject matter of claim 15 is directed to the claim 14 system for automated project accountability. The system for automated project accountability further includes means for providing technical information from the project creator (Specification page 12, lines 21-24; Figure 3, block 330). The system includes means for providing security information from the project creator (Specification page 12, lines 24-26).

#### **I. INDEPENDENT CLAIM 16**

The subject matter of claim 16 is directed to a computer readable medium storing a computer program (Specification page 3, lines 11-12, which states in part “a computer readable medium storing a computer program”). The computer readable code is for determining at least one decision maker of a project preparation (Specification page 6, lines 9-11; Figure 2, block 220) at least one decision maker of a project preparation (Specification page 6, lines 9-11). The computer readable code is for determining (Figure 2, block 230) a readiness category for the



decision maker (Specification page 2, line 17). The computer readable code is for providing (Figure 2, block 230) a readiness category rating for the readiness category (Specification page 7, lines 1-4). The computer readable code is for determining a decision process for the readiness category and readiness category rating (Specification page 7, lines 11-18). The computer readable code is for conducting (Figure 2, block 260) a project assessment as a function of the decision process (Specification page 8, lines 20-27). The computer readable code is for determining (Figure 2, block 270) a project readiness as a function of the project assessments (Specification page 2, lines 21-22).

**J. DEPENDENT CLAIM 17**

The subject matter of claim 17 is directed to the computer readable medium of claim 16. The computer readable medium further includes means for assigning vote weighting to the decision maker (Specification page 7, lines 11-12).

## **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

### **A. GROUND OF REJECTION 1**

Claims 1-8 stand finally rejected under 35 U.S.C. § 101.

### **B. GROUND OF REJECTION 2**

Claims 1-22 stand finally rejected under 35 U.S.C. § 103(a) as obvious in view of Frye et al. (U.S. Patent Publication 20010032105, hereinafter, "*Frye*") in view of Helzerman (U.S. Patent Number 6901372, hereinafter, "*Helzerman*") under 35 U.S.C. § 103(a), further in view of Gauger (U.S. Patent Publication 20070288292, hereinafter "*Gauger*").

## ARGUMENT

### **A. GROUND OF REJECTION 1: Claims 1-8**

Claims 1-8 are rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter. Applicants have amended claim 1 to recite an “electronic forum determining”. Such amendment is supported at least at specification page 6, lines 28-30. “A claimed process is surely patent-eligible under § 101 if: (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing.” *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008) *en banc*.

Claim 1 recites “electronic forum determining a readiness category for the decision maker”, therefore satisfying the prerequisites set forth in *In re Bilski*. Accordingly, Applicants urge that for at least this reason, Claim 1 includes statutory subject matter. The specification provides:

The collaborative mechanism could be an electronic forum ((for discussion over long period of time,) or could be a "chat" or instant messaging technology (for focused, short period "real time" discussion.).

Specification page 6, lines 28-30.

The specification further provides:

The collaborative mechanism may be invoked between the project decision maker, the contributing decision makers, and the participant decision makers to review the tentative readiness of categories, make suggestions, discuss, argue, and persuade.

Specification page 6, lines 25-28.

Applicants urge that it is common knowledge that the electronic forum is a computer mediated apparatus that includes at least two computers, e.g., as shown in Figure 1 as communication devices 109, network server 136, network server 137, and/or application server 165. Accordingly, Claim 1 recites a particular machine, thus satisfying the criterion set forth in *In re Bilski*. Thus, Applicants urge that for at least this reason, claim 1 satisfies patent-eligibility under 35 U.S.C. § 101.

Claims 2-8 by virtue of their dependency on claim 1, also recite patent eligible subject matter. Accordingly, for at least the reason set forth above, claims 2-8 are statutory subject matter.

**B. GROUND OF REJECTION 2: Claims 1-22**

**B (1): Claims 1, 9 and 16**

The Examiner rejects claims 1, 9, and 16 under 35 U.S.C. § 103(a) in view of *Frye* in view of *Helzerman*, further in view of *Gauger*. Claim 1 is representative in this group of claims.

Claim 1 recites:

A method for automated project accountability comprising:  
determining at least one decision maker of a project preparation;  
electronic forum determining a readiness category for the decision maker;  
providing a readiness category rating for the readiness category;  
determining a decision process for the readiness category and readiness category rating;  
conducting a project assessment as a function of the decision process; and  
determining a project readiness as a function of the project assessments.

The Examiner rejects claim 1, stating as follows:

As per claim 1, Frye discloses a method, system and computer readable medium for automated project accountability comprising:

determining at least one decision maker of a project preparation (abstract and paragraph 0030);

determining a project readiness as a function of the project assessments (paragraphs 0034 and 0040).

providing a readiness category rating for the readiness category (paragraph 0040);

conducting a project assessment as a function of the decision process (paragraphs 0034 and 0040).

However, Frye does not explicitly disclose:

determining a readiness category for the decision maker; and

determining a decision process for the readiness category and readiness category rating.

Helzerman discloses a quality operation system for performing manufacturing projects comprising:

determining a readiness category for the decision maker (col. 4, lines 4 1-64); and determining a decision process for the readiness category and readiness category rating (col. 3, lines 25-53 and col. 6, lines 22-49).

Therefore, it would have been obvious to one of ordinary skill in the art at

the time invention was made to modify Frye by incorporating or implementing a quality operating system for developing and conducting concept feasibility and ready phases for a desired product to ensure that the manufacturing project is completed in a timely and efficient manner.

Final Office Action dated February 11, 2009, pages 3-4.

Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching, suggestion or incentive supporting the combination. *In re Geiger*, 815 F.2d 686, 688, 2 U.S.P.Q.2d 1276, 1278 (Fed. Cir. 1987).

The examiner bears the burden of establishing a *prima facie* case of obviousness based on prior art when rejecting claims under 35 in U.S.C. §103. *In re Fritch*, 972 F.2d. 1260, 23 U.S.P.Q. 2d 1780 (Fed. Cir. 1992). Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusions of obviousness. *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385 (U.S. 2007) (citing *In re Khan*, 441 F.3d 977, 988 (Fed. Cir. 2006)). Additionally, the prior art reference (or references, when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974).

Initially, Applicants agree with the Examiner that *Frye* does not teach the claim 1 recited, “determining a readiness category for the decision maker”. (See Final Office Action dated February 11, 2009, page 3).

However, the Examiner errs with respect to the application of *Helzerman* to claims 1, 9, and 16 recited, “determining a readiness category for the decision maker”. The Examiner relies on the following passage as allegedly teaching this feature.

Project leaders and managers next select or identify a **"lead" technology group** for each identified customer need. For example and without limitation, project leaders and managers identify and/or select lead engineers and teams or individuals who will be responsible for preparing and implementing the concept proposal and project. The "output" or result of step 52 is the assignment(s) for concept proposals development.

In step 52, the preliminary concepts are received and developed. **The lead technology group (i.e., the group in charge of preparing and implementing the proposal and project)** begins by identifying the "best in class" technology (i.e., the existing product or process which clearly represents superior value to the

customer, relative to all similar products or processes) and the "state-of-the-art" technology (i.e., the latest and most sophisticated or advanced stage of a technology, art or science existing at the time of manufacture). For example and without limitation, within the customer need of interest, **the lead technology group** identifies the technology currently in use for the application/need that represents superior value to the customer, relative to all similar processes. The lead technology group further determines what technologies being developed offer the greatest advantage to the company.

*Helzerman* column 4, lines 41-64 (emphasis added).

As can be seen, *Helzerman* merely teaches that project leaders and managers next select or identify a 'lead' technology group for each identified customer need. The 'output' of this step is the assignment of people for concept proposals development. No assessment of the readiness category for the decision maker is performed, in the manner claimed. Instead, *Helzerman* picks technologies that are either "best in class" or that are "state of-the-art". In contrast, claims 1, 9, and 16 recite, "determining a readiness category for the decision maker". In particular, claims 1, 9, and 16 recite that the readiness category is **for** the decision maker, rather than for the project itself. Thus, actual progress of the project is not addressed in this particular claim limitation, and the readiness category is **for** the decision maker. Moreover, the Examiner does not use *Gauger* to cure the absence of *Frye* or *Helzerman* to teach this claimed feature. Accordingly, for at least the reasons stated above, the Examiner has not made a *prima facie* case of obviousness under 35 U.S.C. § 103 with respect to these claims.

From these descriptions of the references, one of ordinary skill can readily ascertain that the references are completely distinct from each other and the references are completely distinct from the claimed invention. Thus, one of ordinary skill would have no reason to look at *Frye*, *Helzerman*, and *Gauger* to achieve the claimed invention. Accordingly, no motivation exists to combine *Frye*, *Helzerman*, and *Gauger* to reach the claimed devices and methods. For this reason, the claims are non-obvious in view of *Frye*, *Helzerman*, and *Gauger*.

#### **B (2): Claims 2, 10, and 17**

Claims 2, 10, and 17 depend from claims 1, 9, and 16, respectively, and are also not obvious

in view of *Frye*, in view of *Helzerman*, and further in view of *Gauger*, at least by virtue of their dependency. Claim 2 is representative in this group of claims.

Claim 2 recites:

The method of claim 1 further comprising: assigning vote weighting to the decision maker.

The Applicants agree with the Examiner that *Frye* does not teach the above-recited claim limitation. (see Final Office Action dated February 11, 2009, page 4) . Nevertheless, the Examiner rejects claim 2, stating as follows:

Applicants argue that Helzerman does not teach or suggest "assigning vote weighting" to the decision maker as recited in claims 2, 10 and 17.

According to Appellants' specification page 7, lines 11-16, a project decision maker designates a decision process by assigning vote weighting to each contributing and participant decision maker in which the decision process may include options as unanimous, simple majority, percentage majority, points system, super voter and other options and rules. The Examiner interprets **assigning vote weighting as giving the participants working on the project the authority to make decisions according to their position held during the project**. Helzerman teaches a quality operating system and method for performing manufacturing projects in which the project is divided into five phases (i.e. concept proposal, concept feasibility, a manufacturing concept ready, manufacturing concept ready, manufacturing implementation ready and replication). The project leaders are selected for managing the project and ensuring that the project is ready before moving to the next phase of the project. The project leaders also conduct milestone reviews to review the project status to ensure the project is progressing according to the project plan (abstract, col. 3, lines 44-62, col. 4, lines 41-64, col. 5, lines 66-67, col. 6, lines 1-12 and col. 9, lines 44-64). Since Helzerman teaches project leaders are selected for managing the project, which may include making decisions, determining if the project is ready to begin and setting milestones for each phase of the project then Helzerman teaches assigning vote weighting to the decision maker as recited in claims 2, 10 and 17.

Final Office Action dated February 11, 2009, pages 11-12 (emphasis added).

The Examiner places the following definition/interpretation on the claim 2 limitation: "giving the participants working on the project the authority to make decisions according to their position held during the project."

The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999).

Applicants urge that the Examiner takes a meaning for ‘vote weighting’ that is unreasonably broad in view of the specification, or even claim 2 standing alone. The alternatives the Examiner cites (Specification page 7, lines 13, *et seq.*) are additional decision processes which can be distinct embodiments from the claim 2 recited, “assigning vote weighting”. The Examiner urges that the following passage (hereinafter, “rationale passage”) provides a basis for an expanded interpretation of the limitation.

The decision process may include options as unanimous, simple majority, percentage majority (such as two thirds required,) points system, super-voter (where certain key individuals must vote yes to proceed,) and other options and rules.

Specification page 7, lines 13-16.

For example, it is clear that the “simple majority”, is offered as an alternate and conflicting embodiment to the claim 2 recited, “vote weighting”. Accordingly, the rationale passage does not define the scope of an assignment of vote weighting recited as recited in claim 2, but instead, the rationale passage is a list of further alternatives. For the reason that the alternatives given in the rationale passage conflict, in some cases, with the assignment of vote weighting, it is unreasonable for the Examiner to assign such a list of alternatives as a definition to the claim 2 recited, “assigning of vote weighting.”

A more reasonable interpretation of vote weighting can be found in the dictionary. A ‘weight’ or ‘weighting’ is defined in Merriam-Webster’s Collegiate Dictionary:

7 a: the relative importance or authority accorded something b : measurable influence esp. on others.  
Merriam-Webster’s Collegiate Dictionary, Eleventh Edition, Copyright 2004.

Applicants will show, that the Examiner statements, above, are entirely conclusory, and unsupported in each of the six (6) passages that the Examiner relies upon (*See* Final Office Action dated February 11, 2009, pages 4 and 11) when using a proper interpretation of the claimed, “vote



weighting”. A reason why such passages are not helpful in teaching the limitation of claim 2, is that the Examiner has simply placed an unreasonably broad interpretation on claim 2.

The first passage the Examiner relies on is:

A quality operation system or method 10 for performing manufacturing projects 12. The method 10 efficiently organizes the project into five phases including a concept proposal phase 24, a concept feasibility phase 26, a manufacturing concept ready phase 28, a manufacturing implementation ready phase 30, and a replication phase 32.

*Helzerman* Abstract.

As can be seen, the first passage merely teaches efficient organization of the project into five phases. In contrast, claim 2 recites, “assigning vote weighting to the decision maker”. As can be seen, this teaching of *Helzerman* is entirely inadequate to teach the claim limitation, as *Helzerman* does not even mention voting in this passage.

The second passage the Examiner relies on is:

Referring now to FIG. 2, there is shown a method 14 for providing a skilled and competent workforce for performing a project 12. In block or step 40, people, employees or personnel, who act as the “input” for this method 14, are selected and provided by a human resources department or committee. In block or step 42, the personnel are provided with orientation and communication processes. Particularly, the selected or chosen employees are provided with general and required job orientation information. For example and without limitation, the employees are instructed how to most effectively and/or efficiently perform their respective jobs, duties and/or responsibilities. Additionally, the employees are provided with an ongoing communication mechanism in which they can tender any questions, concerns or other matters regarding their employment and/or job duties, and receive prompt and accurate information in response thereto.

*Helzerman* column 2, lines 48-63.

As can be seen, the second passage merely teaches a way to train and teach employees, as well as receive questions from such employees. In contrast, claim 2 recites, “assigning vote weighting to the decision maker”. As can be seen, this teaching of *Helzerman* is entirely inadequate to teach the claim limitation, as *Helzerman* teaches nothing more than orienting employees. Moreover, one of ordinary skill in the art would not confuse *Helzerman*’s

mechanism of tendering questions, concerns, etc. to managers as including a right to vote. Accordingly, the Examiner has again failed to show a teaching of this claim limitation.

The third passage the Examiner relies on is:

Furthermore, a project timing plan is maintained for every project. The timing plan includes, as a minimum, the individual project metrics (described below) and milestone reviews. Detailed tasks for each phase, however, may differ from project to project. During concept proposal, the overall timing is estimated for all project phases and shown as a "baseline" on sub-sequent milestone reviews. As remaining phases through the manufacturing implementation ready phase 30 are completed, detailed timing for the next successive phase is determined and prepared.

*Helzerman* column 3, lines 44-62.

As can be seen, the third passage merely teaches project scheduling and planning. In contrast, claim 2 recites, "assigning vote weighting to the decision maker". As can be seen, this teaching of *Helzerman* is entirely inadequate to teach the claim limitation, as *Helzerman* teaches mere milestone reviews, and as such, the milestone reviews could not be construed as teaching assignment of vote weighting.

The fourth passage the Examiner relies on is:

Project leaders and managers next select or identify a "lead" technology group for each identified customer need. For example and without limitation, project leaders and managers identify and/or select lead engineers and teams or individuals who will be responsible for preparing and implementing the concept proposal and project. The "output" or result of step 52 is the assignment(s) for concept proposals development.

*Helzerman* column 4, lines 41-64.

As can be seen, the fourth passage merely teaches selection of lead engineers who are responsible. In contrast, claim 2 recites, "assigning vote weighting to the decision maker". As can be seen, this teaching of *Helzerman* is entirely inadequate to teach the claim limitation, as *Helzerman* merely teaches the assignment of responsibilities to individuals, and lacks any form of description of a vote.

The fifth passage the Examiner relies on is:

In block or step 58, ("AMTD") managers and project leaders review the

project proposals. The employees in charge of preparing the proposals schedule a meeting to be attended by affected "AMTD" managers and project leaders (and by a director if the project concerns a "non-forum" originated want). Each lead project engineer summarizes their respective project using executive summary fields, and identify opportunities for crossproject synergy. The groups submit the proposals for review to the relevant forum for "forum sponsored" projects, and to a director for "non-forum sponsored" projects. Finally, in step 58, a project portfolio is compiled which contains all of the recommended projects which are returned from the forums. The groups then verify budget and headcount availability for the entire portfolio.

*Helzerman* column 5, lines 66-67 – column 6, lines 1-12.

Again, the Examiner falls short of showing a passage that teaches the limitations of claim 2. As can be seen, the fifth passage merely teaches receiving of proposals at forums, and providing recommended projects from the forums. In contrast, claim 2 recites, "assigning vote weighting to the decision maker". A recommendation may represent an opinion. The forums may have decision makers, however, nothing in the above passage teaches that the decision makers are assigned a vote weighting in the manner claimed. Absent a vote weighting, the passage, above, cannot be said to teach the claimed feature. If anything, the Examiner seems to be asserting that a vote is being taught. However, such an interpretation reads out the limitation 'weighting', which is wholly improper. As can be seen, this teaching of *Helzerman* is entirely inadequate to teach this claim limitation. Applicants have shown that five disparate passages in *Helzerman* fail to support the Examiner's contention that *Helzerman* teaches the limitation of claim 2.

The sixth passage the Examiner relies on is:

The group then obtains management approval of process manufacturing concept readiness. In the preferred embodiment, the group demonstrates the process to management, and provides managers with metrics and results including costs, timing, and quality estimates. The group then develops a preliminary replication plan and reviews the replication plan with customers. Particularly, the group recommends the sequence of replicating to other company facilities, and describes unique local requirements, by replication site identified. The "output" or result of these processes is management and customer concurrence of the preliminary replication plan.

*Helzerman* column 9, lines 44-64.

The Examiner has posed six passages as teaching the limitations found in claim 2. If the limitation of claim 2 were present in *Helzerman*, one would expect that two or three passages would be sufficient to enable one of ordinary skill in the art to practice the limitation of claim 2. Nevertheless, six passages are offered, and Applicants will distinguish the final, sixth passage. As can be seen, the sixth passage merely teaches approving process manufacturing concepts, as well as recommendations and concurrence by managers and customers, respectively. In contrast, claim 2 recites, “assigning vote weighting to the decision maker”. As can be seen, this teaching of *Helzerman* is entirely inadequate to teach the claim limitation, as *Helzerman* teaches sequential review and decision making regarding process manufacturing. Importantly, this final passage fails to describe a vote, much less the assignment of a vote weighting as claimed.

The Examiner has made nine (9) previous Office Actions; Final Office Actions; and/or Answers to claim 2, in substantially the form that it exists in today. Furthermore, the Examiner in previous office actions has advanced three (3) prior art references (*Gundewear*, *Barnard*, and *Frye*), as teaching the limitation of claim 2. (See office action dated November 5, 2004, pages 2 and 3; office action dated April 20, 2005, pages 3 and 4; and office action dated September 7, 2005, page 3). Each time, Applicant has successfully argued, and the Examiner has quietly withdrawn, the allegation that the prior art teaches this claimed feature. Moreover, the Examiner, only in the most recent Final Office Action, dated February 11, 2009, alleges her currently overly broad interpretation of the claim 2 limitation in order to apply *Helzerman*. If the claim interpretation and the applied cited art were tenable, such an interpretation and cited art would have been developed many office actions ago. Importantly, the Examiner does not rely on *Gauger* to cure the failure of *Frye* and *Helzerman* to teach this claimed feature. Accordingly, for at least this reason, Claim 2 is allowable over *Frye*, *Helzerman*, and *Gauger*.

Rejections on obviousness grounds cannot be sustained by mere conclusory statements, and there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385 (U.S. 2007).

The Examiner offers the following rationale to combine:

Therefore, it would have been obvious to one of ordinary skill in the art at the time invention was made to modify *Frye* by incorporating or implementing a

quality operating system for selecting and assigning members of technology group project assignments for a desired product to ensure that the manufacturing project is completed in a timely and efficient manner.  
Final Office Action, February 11, 2009, page 5.

*Frye* provides for centralized decision making by an “approver”, as repeatedly illustrated in the following passages.

*Frye* teaches,

A stage approver is then electronically notified by the computer system that a stage approval needs to be made. In response to this notice, **the stage approver reviews the collected information and makes a determination as to whether the project should advance to the next stage**

*Frye* Abstract (emphasis added).

In a preferred embodiment, a **single individual** is then charged with the task of reviewing all materials and comments and making a decision regarding the present tollgate.

*Frye* paragraph 0031 (emphasis added).

In step 512, the system receives a second stage approver's request to review the received second stage assessment and initiation information and, in step 514, **the system receives the second stage approver's decision** as to whether or not to advance the program into stage 3.

*Frye* paragraph 0040 (emphasis added).

In step 808, the system receives a third stage approver's request to review the received third stage project development information and, in step 810, the system receives **the third stage approver's decision** as to whether or not to advance the program into the fourth stage.

*Frye* paragraph 0044 (emphasis added).

In step 1108, the system receives a fourth stage approver's request to review the received fourth stage scale-up and sampling information and, in step 1110, the system receives **the fourth stage approver's decision** as to whether or not to advance the program into the fifth stage.

*Frye* paragraph 0051 (emphasis added).

In step 1108, the system receives a fourth stage approver's request to review the received fourth stage scale-up and sampling information and, in step 1110, the system receives **the fourth stage approver's decision** as to whether or not to advance the program into the fifth stage.

*Frye* paragraph 0054 (emphasis added).

In step 1508, the system receives the sixth stage approver's request to

review the received sixth stage implementation information and, in step 1510, the system receives **the sixth stage approver's decision** as to whether or not to approve the completion of the project.

*Frye* paragraph 0057 (emphasis added).

*Frye* calls for the approver to act unilaterally, in the preferred embodiment, as well as at repeated 'tollgates'. These unilateral decisions are, indeed timely and efficient. Accordingly, it is puzzling how the added features of *Helzerman* would make the operation of *Frye* timelier or more efficient, as the Examiner alleges such a combination would achieve. Specifically, the Examiner alleges that *Helzerman* adds assigning vote weighting to the decision maker. Even if *Helzerman* did provide for a mere vote, it is unclear in what way a vote would make the outcome more efficient, as a single decision is rendered as fast or faster than that obtained by vote. Logically, *Helzerman* fails to achieve that which the Examiner suggests it sets out to do, at least when combined with *Frye*. The Court of Appeals for the Federal Circuit, in *KSR* urges that an Examiner apply common sense to showing combinations. However, common sense indicates that a vote is no more efficient than a unilateral decision by the *Frye* 'approver'. Thus, even if *Helzerman* taught the "assigning vote weighting" as claimed, the Examiner provides a reason to combine that is not a rational underpinning to promote such a combination. Accordingly, for at least this additional reason, Applicants' have shown the Examiner to lack a *prima facie* case of obviousness for claim 2. Thus, for at least this additional reason, Applicants urge the Board to reverse the Examiner as to 35 U.S.C. § 103.

From these descriptions of the references, one of ordinary skill can readily ascertain that the references are completely distinct from each other and the references are completely distinct from the claimed invention. Thus, one of ordinary skill would have no reason to look at *Frye*, *Helzerman*, and *Gauger* to achieve the claimed invention. Accordingly, no motivation exists to combine *Frye*, *Helzerman*, and *Gauger* to reach the claimed devices and methods. For this reason, the claims are non-obvious in view of *Frye*, *Helzerman*, and *Gauger*.

For at least the above reasons, claims 2, 10, and 17 are not obvious in view of *Frye*, *Helzerman*, and *Gauger*, and it is respectfully requested that the Board reverse the Examiner's Final Rejection of those claims.

**B (3): Claims 3-8, 11-15 and 18-22**

Claims 3-8, 11-15 and 18-22 depend directly or indirectly from claims 1, 9, and 16, respectfully. Accordingly, by virtue of their dependency on claims 1, 9, and 16, which have been shown to be allowable, claims 3-8, 11-15 and 18-22 likewise are allowable over *Frye*, *Helzerman*, and *Gauger* for at least the reasons given with respect to claims 1, 9, and 16.

**C. CONCLUSION**

*Frye*, *Helzerman*, and *Gauger* do not teach all of the features of the claims, as shown above. Thus, *Frye*, *Helzerman*, and *Gauger* do not make the claims obvious. Accordingly, Applicants respectfully request that the Board of Patent Appeals and Interferences direct that all of the claims be allowed.

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Respectfully submitted,

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## **CLAIMS APPENDIX**

The text of the claims involved in the appeal are:

1. A method for automated project accountability comprising:  
determining at least one decision maker of a project preparation;  
electronic forum determining a readiness category for the decision maker;  
providing a readiness category rating for the readiness category;  
determining a decision process for the readiness category and readiness category rating;  
conducting a project assessment as a function of the decision process; and  
determining a project readiness as a function of the project assessments.
2. The method of claim 1 further comprising: assigning vote weighting to the decision maker.
3. The method of claim 1 further comprising:  
changing a project management application graphical interface, as a function of the project assessment.
4. The method of claim 1 further comprising:  
assigning a time limit in association with the project assessment and the project readiness.
5. The method of claim 1 further comprising:  
providing a collaborative environment for the decision maker.
6. The method of claim 5 wherein the collaborative discussion mechanism is invoked for determining the readiness category, determining the decision process, conducting the project assessment, and determining the project readiness.



7. The method of claim 1 wherein the determination of at least one decision maker further comprises:

- providing project information from a project creator; accessing a data repository;
- retrieving a list from the data repository;
- selecting a project decision maker as a function of the project information and list; and
- selecting at least one contributing decision maker as a function of the project information, list, and project decision maker.

8. The method of claim 7 further comprising:

- providing technical information from the project creator; and providing security information from the project creator.

9. A system for automated project accountability comprising:

- means for determining at least one decision maker of a project preparation;
- means for determining a readiness category for the decision maker;
- means for providing a readiness category rating for the readiness category;
- means for determining a decision process for the readiness category and readiness category rating;
- means for conducting a project assessment as a function of the decision process; and
- means for determining a project readiness as a function of the project assessments.

10. The system of claim 9 further comprising:

- means for assigning vote weighting to the decision maker.

11. The system of claim 9 further comprising:

- means for changing a project management application graphical interface, as a function of the project assessment.

12. The system of claim 9 further comprising:

means for assigning a time limit in association with the project assessment and the project readiness.

13. The system of claim 9 further comprising:

means for providing a collaborative environment for the decision maker.

14. The system of claim 9 wherein the means for determination of at least one decision maker further comprises:

means for providing project information from a project creator; means for accessing a data repository;

means for retrieving a list from the data repository;

means for selecting a project decision maker as a function of the project information and list; and

means for selecting at least one contributing decision maker as a function of the project information, list, and project decision maker.

15. The system of claim 14 further comprising:

means for providing technical information from the project creator; and

means for providing security information from the project creator.

16. A computer readable medium storing a computer program comprising:

computer readable code for determining at least one decision maker of a project preparation;

computer readable code for determining a readiness category for the decision maker;

computer readable code for providing a readiness category rating for the readiness category;

computer readable code for determining a decision process for the readiness category and readiness category rating;

computer readable code for conducting a project assessment as a function of the decision process; and

computer readable code for determining a project readiness as a function of the project assessments.

17. The computer readable medium of claim 16 further comprising:

means for assigning vote weighting to the decision maker.

18. The computer readable medium of claim 16 further comprising:

computer readable code for changing a project management application graphical interface, as a function of the project assessment.

19. The computer readable medium of claim 16 further comprising:

computer readable code for assigning a time limit in association with the project assessment and the project readiness.

20. The computer readable medium of claim 16 further comprising:

computer readable code for providing a collaborative environment for the decision maker.

21. The computer readable medium of claim 16 wherein the computer readable code for determination of at least one decision maker further comprises:

computer readable code for providing project information from a project creator;

computer readable code for accessing a data repository;

computer readable code for retrieving a list from the data repository;

computer readable code for selecting a project decision maker as a function of the project information and list; and

computer readable code for selecting at least one contributing decision maker as a function of the project information, list, and project decision maker.

22. The computer readable medium of claim 21 further comprising:

computer readable code for providing technical information from the project creator; and

computer readable code for providing security information from the project creator.

## **EVIDENCE APPENDIX**

There is no evidence to be presented.

### **RELATED PROCEEDINGS APPENDIX**

There are no related proceedings apart from the Appeal, wherein the notice of appeal was filed April 06, 2009. No decision has been rendered by the Board with respect to the April 06, 2009 appeal.